

OFFICE OF THRIFT SUPERVISION

Approval of an Application to Acquire a State Bank And Related Filings

Order No.: 2003-04

Date: February 6, 2003

OTS Nos. 05798

CharterBank (Association), West Point, Georgia, seeks the Office of Thrift Supervision's (OTS) approval under § 18(c) of the Federal Deposit Insurance Act (FDIA), and 12 C.F.R. §§ 552.13 and 563.22(a), to acquire Eagle Bank of Alabama (Bank), Opelika, Alabama in a merger transaction. In addition, the Association's mutual holding company, First Charter MHC (MHC), and its mid-tier stock holding company, Charter Financial Corporation (Holding Company), both of West Point, Georgia, seek permission to merge the Bank into the Association and merge the Bank's parent, EBA Bancshares, Inc., Opelika, Alabama, (BHC) into a subsidiary of the Association pursuant to 12 C.F.R. § 575.10(a)(6). (Collectively, the foregoing filings are referred to as the Applications.)

The Proposed Transaction

The proposed transaction will be structured in the following manner: (a) the Association will organize an Alabama corporation as a wholly-owned subsidiary to facilitate the merger (Merger Subsidiary); (b) Merger Subsidiary will be merged with and into the BHC, with the BHC as the "Surviving Corporation" (Holding Company Merger); (c) in connection with the Holding Company Merger, each of the issued and outstanding shares of common stock of the BHC will be converted into the right to receive cash (Merger Consideration); (d) immediately following the Holding Company Merger, the Surviving Corporation will be dissolved and all its assets (consisting principally of the Bank's stock, investment grade securities and other liquid investments) and liabilities will become the assets and liabilities of the Association; and (e) immediately following these steps, the Bank will merge with and into the Association, with the resulting institution being the Association (Bank Merger). Upon consummation of the Bank Merger, the Association will continue to be a wholly owned subsidiary of the Holding Company.

Bank Merger Act Application

The Association seeks approval of the merger under § 18(c) of the FDIA (the Bank Merger Act (BMA)) and 12 C.F.R. § 563.22. In evaluating a BMA application, OTS is required to consider the effect on the capital of the resulting association; the financial and managerial resources of the constituent institutions; the future prospects of the constituent institutions; the convenience and needs of the community; conformance to applicable law,

regulation, and supervisory policy; factors relating to fairness of and disclosure concerning the transaction; and the effect on competition. Also, the USA PATRIOT Act amended the BMA, adding 12 U.S.C. § 1828(c)(11), which requires the responsible agency to take into consideration, in its evaluation of the BMA application, the effectiveness of any insured depository institution in combating money laundering activities. In addition, under 12 C.F.R. § 563e.29, OTS must consider the constituent institutions' records of performance under the CRA.

As for managerial resources, OTS, in its role as the regulator of the Association, is familiar with its managerial resources. Upon consummation of the acquisition of the Bank, the board of directors and the executive officers of the Association will remain in place. Based on its experience with the managerial resources of the Association, OTS concludes that the managerial resources of the Association are consistent with approval. The Bank's management is regarded by its regulators as experienced and competent. Based on the foregoing, OTS concludes that the managerial resources of the Association and the Bank are consistent with approval.

As for financial resources, and the capital level of the resulting savings association, OTS is familiar with the Association's financial resources. As of September 30, 2002, the Association's core, tangible, and risk-based capital ratios were 10.16%, 10.16%, and 32.67%, respectively. Upon consummation of the transaction, the Association will remain "well capitalized" pursuant to the OTS Prompt Corrective Action regulation. As of September 30, 2002, the Bank had core and risk-based capital ratios of 6.68% and 10.69%, respectively. Based on the foregoing, OTS concludes that the financial resources of the Association and the Bank are consistent with approval, and that the level of the Association's capital is consistent with approval.

Based on its consideration of the managerial and financial resources of the Association and the Bank, and review and evaluation of the *pro forma* financial statements for the impact of the transaction on the Association, OTS concludes that the future prospects of the Association and the Bank are consistent with approval.

With respect to the competitive effects of the merger, OTS has reviewed the increase in the Herfindahl-Hirschman Index (HHI) and the increase in the Association's market share in the relevant geographic market that would result from the acquisition and has concluded that competitive factors considerations are consistent with approval. In the relevant geographic market of the Opelika-Auburn, Alabama MSA, where the Bank and the Association compete directly, the HHI will increase approximately 13 points, to approximately 1686, and the Association's market share, based on deposits, will increase by 1.16% to 6.81%. In addition, the Department of Justice, Antitrust Division, reviewed the acquisition, and has not objected to the transaction based on competitive considerations, and none of the other banking regulators objected to the transaction on competitive grounds. Based on the foregoing, OTS concludes that the competitive considerations are consistent with approval.

As for CRA, the Association's and the Bank's most recent CRA ratings are "Satisfactory." No comments with respect to community reinvestment have been filed. Accordingly, OTS concludes that approval of the transaction is consistent with the CRA.

As for convenience and needs, the Association will be assuming the operations of the Bank's existing offices and providing continuing services to the offices' customers and communities. No offices of the Bank or the Association will be closed. Accordingly, OTS concludes that convenience and needs considerations are consistent with approval of the transaction.

As for equitable treatment, full disclosure, employment contracts and compensation of officers and directors, the shareholders of the BHC were provided full disclosure of the proposed transaction and voted to approve the proposed transaction. The accountholders of the Bank will become members of the MHC. Further, full disclosure has been provided regarding written or oral agreements or understandings through which any person or company will receive anything of value in connection with the proposed transaction. No officers or directors of the Bank or BHC will receive employment contracts. There will be no advisory board. Accordingly, OTS concludes that approval of the transaction is not objectionable based on equitable treatment, full disclosure, and compensation of officers and directors, and advisory boards.

As for compliance with money laundering statutes and regulations, OTS examines savings associations for compliance with such statutes and regulations. OTS has reviewed the compliance record of the Association, which involves an evaluation of the Association's compliance with anti-money laundering provisions, and concludes that the Association's effectiveness in combating money-laundering activities is consistent with approval. No information has been received from the Bank's regulators suggesting its efforts in combating money-laundering are inconsistent with approval.

For the reasons set forth above, OTS finds that the Applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the Southeast Regional Director, or his designee (Regional Director). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The Association and the Bank must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The proposed transaction must be consummated no earlier than fifteen (15) calendar days and no later than 120 calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Association, the MHC, the Holding Company, the Bank, and the BHC must certify in writing to the

Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Association, the MHC, the Holding Company, the Bank, and the BHC as disclosed in the Applications. If additional information having a material adverse bearing on any feature of the Applications is brought to the attention of the Association, the MHC, the Holding Company, the Bank, the BHC, or OTS since the date of the financial statements submitted with the Applications, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to the consummation of the transaction;

4. Within 5 calendar days after the effective date of the proposed transactions, the Association must submit the following items to the Regional Director: (i) a certification of legal counsel informing the OTS of (a) the effective date of the transaction, and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications and this Order; and (ii) a pro forma statement of financial condition for the resulting entity with adjustments noted; and
5. No later than 30 calendar days after the effective date of the proposed transaction, the Association must advise each accountholder, whose withdrawable accounts in the resulting institution would increase above \$100,000 as a result of the proposed transaction, of the effect of the transaction on deposit insurance coverage, and shall submit evidence of such notification to the Regional Director.

Any time period specified herein may be extended by the Regional Director, for good cause, for up to 120 calendar days.

By order of the Director of the Office of Thrift Supervision, or his designee,
effective February 6, 2003.


Scott M. Albinson
Managing Director
Office of Supervision